

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6425 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to : No

LAXMIKANKTESHVAR MAHADEV

MANDIR&ASHRAM & GAUSHALA TRUST

Versus

STATE OF GUJARAT

Appearance:

MS VP SHAH for MR MS RAO for Petitioner

MR SP DAVE, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 05/02/97

ORAL JUDGEMENT

Upon hearing learned Counsel Ms.V.P.Shah for the petitioner-Trust and learned Govt. Counsel Mr.S.P.Dave for the respondents, I feel that the present petition requires a complete recognition and the impugned orders require to be quashed and set aside.

The petitioner before me, happens to be one Shri Laxmikanteshwar Mahadev Mandir & Ashram and Gaushala Trust, a public charitable Trust registered under the Bombay Public Trust Act, 1950, situated at Katargam under the Choryasi Taluka of the District of Surat. One Amrutlal Gulabbhai Desai, since deceased, had submitted the necessary form as the holder of the land under the Urban Land (Ceiling and Regulation) Act, 1976 and had shown three pieces of land in the said form. It was said in the form itself that, the land bearing Survey No. 163 situated at Katargam has been given to the petitioner-Trust and that it is being utilised by the petitioner-Trust for the religious and public charitable purposes. This land was admeasuring 18414 sq.mtrs. The Competent Authority has decided the matter under his orders dated January 31, 1984. There has been the recognition of the case of the holder in respect of this land bearing Survey No.163 by saying that, as a matter of fact, even before coming into operation of the ULC Act, 1976, the land in question was given to the petitioner-Trust and that the said land was being utilised by the petitioner-Trust for the public charitable and religious purposes. Accepting this case, the Competent Authority had come to the conclusion that this land should not be taken into consideration while deciding the question in respect of the excess vacant land to be held by the holder of the land, Amrutlal Gulabbhai Desai, since deceased. These orders dated January 31, 1987 were taken under revision by the State Government under Section 34 of the ULC Act, 1976. It requires to be appreciated that these revision proceedings were initiated and completed by the State behind the back of the petitioner-Trust because, no notice whatsoever came to be issued and served upon the petitioner-Trust. Though it appeared very clearly from the record which was available to the State Government at the relevant time that the original holder, deceased Amritlal Gulabbhai Desai was no more, the notice came to be issued in his name. Ultimately, by a brief order and especially holding that the holder has failed to represent his case in response to the show cause notice, the Joint Secretary, Revenue Department, State of Gujarat, had come to the conclusion that the orders pronounced by the Competent Authority were required to be quashed and set aside under Section 34 of the Act of 1976 and that the land in question which was of the petitioner-Trust was required to be declared as the excess vacant land. These orders pronounced by the State in exercise of the powers conferred under Section 34 of the Act of 1976 have been brought in challenge before me, in the present petition.

Learned Counsel Ms.Shah who appears on behalf of the petitioner-Trust assails the above said orders of the Government which appeared to have been passed in the purported exercise of powers under Section 34 of the ULC Act, 1976 at least, on three grounds. The first ground being placed in the forefront by the learned Counsel is that, Section 34 and especially the proviso annexed to it of the ULC Act, 1976 contemplates that, no revisional powers could be exercised without giving a reasonable opportunity of being heard to the person who is interested in the land and yet no notice whatsoever came to be issued and served upon the petitioner-Trust. The second ground being pointed out by the learned Counsel is that, the show cause notice came to be issued in the name of deceased Amrutlal Gulabbhai Desai, though the fact regarding his demise was very much apparent on the face of the record. The third and the last contention, but which follows the second one, coming from the learned Counsel is that, the proceedings under Section 34 of the Act of 1976 came to be initiated and completed against the man who was no more and, therefore, the entire proceedings and the final outcome thereof have been vitiated.

Upon hearing the learned Counsel, Ms.Shah for the petitioner-Trust and the learned Govt. Counsel Mr. Dave, it appears that the above said are well founded contentions being canvassed by learned Counsel Ms.Shah requires to be accepted. Firstly, when the reference is made to the provisions contained in the proviso annexed to Section 34 of the ULC Act, 1976, it is abundantly clear that, no orders in revision under this Section could be made except after giving the person affected a reasonable opportunity of being heard in the matter. After having drawn my attention to the legal position, learned Counsel for the petitioner-Trust proceeds to urge that, in fact, no such reasonable opportunity of being heard in the matter came to be given to the petitioner-Trust inasmuch as, absolutely, no notice whatsoever was issued against the petitioner-Trust. This being basically a question of fact, there was an endeavour on the part of the learned Govt. Counsel Mr.Dave to find out from the Government files as to whether they would show the issuance and the service of a notice on the petitioner-Trust calling upon them to show as to why the powers under Section 34 of the Act of 1976 should not be exercised by the State Government. The learned Counsel for the Government has failed in his efforts to find out any such notice issued or served upon the petitioner-Trust. Therefore, the very first

contention coming from the learned Counsel for the petitioner requires to be accepted.

The other two contentions coming from the learned Counsel for the petitioner-Trust, though different, appear to be inter-mingled. As indicated earlier, the grievance coming from the petitioner-Trust through the learned Counsel is that the necessary show cause notice under Section 34 of the Act of 1976 was issued in the name of one Shri Amrutlal Gulabbhai Desai, who was no more, at the relevant time and the factum of his death was borne out from the record. When the impugned orders are perused, it becomes clear that the show cause notice was issued in the name of a deceased man, namely, Amrutlal Gulabbhai Desai. The matter does not rest here because, ultimately, the orders as urged by the learned Counsel for the petitioner Ms.Shah, came to be pronounced against a dead man. The clear aspect of the matter is that, though the record reveals that Amrutlal Gulabbhai Desai was no more, unfortunately, the notice came to be issued upon his name and ultimately, the Joint Secretary of the State of Gujarat had preferred to say in his orders that, despite the issuance of a show cause notice, nobody has cared to appear before him. The Joint Secretary, it appears that, had missed to countenance the position that, though the record before him shown very much that Amrutlal Gulabbhai Desai had died since several years back, the notice came to be issued in his name and ultimately, the fault found to be sorted out against the deceased man by these two inter-mingled conditions, therefore, coming from the learned Counsel Ms.Shah shall have to be accepted. It shall have to be appreciated that the said orders are passed behind the back of the petitioner-Trust and that they are nonest in eye of law or void, because the proceedings under Section 34 of the Act of 1976 were initiated and completed against a dead persona.

Therefore, the present petition requires a full recognition. I order accordingly. The impugned orders of the State Government pronounced in purported exercise of powers under Section 34 of the ULC Act, 1976 dated February 8, 1993, available at Annexure.G to the petition are hereby quashed and set aside and the orders pronounced by the Competent Authority shall stand restored. Rule is made absolute to the above said extent only with no order as to costs.

There was a prayer coming from learned Govt. Counsel Mr.Dave saying that, I should order the remand of the matter so that, the appropriate proceedings could be

taken by the State Government while acting under Section 34 of the ULC Act, 1976. In my opinion, this course does not appear to be open to me. I have quashed and set aside the impugned orders on the grounds indicated by me earlier. The orders are void and nonest in eye of law and probably, there could be a grievance coming from the petitioner-Trust that, now, after a long lapse of time, the powers under Section 34 of the ULC Act, 1976 cannot be exercised legitimately, by the State Government. Because of this position, I would only say that, if the Government is of the opinion that they would like to have the exercise of the powers under Section 34 of the ULC Act, 1976, they can do so, but if they prefer to do so, it shall be the right of the petitioner-Trust to contend the proceedings on all the counts including the count that, now, after such a long lapse of time, the revisional powers under Section 34 of the Act of 1976 could not be exercised. If such a contention comes from the petitioner-Trust, it shall have to be dealt with and decided by the State Government according to law and on merits.
